

Federal Communications Commission
Washington, D.C. 20554

LETTER

In reply refer to:
1800C1-SBF/CMW
98080019

March 8, 1999

Released: March 9, 1999

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

California State University at Sacramento
Permittee of KKTO(FM), Tahoe City, California
3416 American River Drive, Suite B
Sacramento, California 95864

Dear Permittee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE against the California State University at Sacramento ("CSUS"), permittee of Station KKTO(FM), Tahoe City, California, pursuant to Section 503(b) of the Communications Act of 1934, as amended (the "Communications Act"), under authority delegated to the Chief of the Mass Media Bureau ("Bureau") by Section 0.283 of the Commission's Rules. It appears that CSUS violated Section 319(a) of the Communications Act, 47 U.S.C. § 319(a), by constructing the facilities for KKTO prior to receiving Commission authority to do so.

In a Memorandum Opinion and Order ("MO&O") released September 14, 1998,¹ the Commission found that "CSUS prematurely constructed the KKTO facilities by installing its antenna, transmitter, transmission line, and related wiring" at a tower site prior to grant of the application to locate KKTO's facilities at that site.² Such action is prohibited by Section 319(a) of the Communications Act which provides in pertinent part that "[n]o license shall be issued under the authority of this Act for the operation of any station unless a permit for its construction has been granted by the Commission." 47 U.S.C. § 319(a). Accordingly, the Commission directed the Bureau to issue a Notice of Apparent Liability consistent with its findings and held CSUS' license application in abeyance pending Bureau action. MO&O at 17965-66.

¹ California State University at Sacramento, 13 FCC Rcd 17960 (1998).


² File No. BMPED-960529IB.

The finding of a rule violation is fully supported by the record and CSUS did not seek review of the Commission's decision. By its own admission, CSUS began construction of the KKTO facilities at the new site in August 1996 and continued construction activities until November 1996.³ CSUS did not, however, receive Commission authority to do so until August 11, 1997, when the Commission granted its application for minor modification of KKTO's construction permit. Accordingly, CSUS is hereby advised of its apparent liability for a forfeiture of \$5,000 for its willful and repeated violation of Section 319(a) of the Communications Act beginning in August 1996 and continuing until August 11, 1997.

This forfeiture amount was determined after consideration of the factors set forth in Section 503(b) of the Communications Act, including the nature, circumstances, extent, and gravity of the violation. We note that CSUS voluntarily disclosed to the Commission that it had substantially completed construction of the KKTO facilities prior to grant of its application for those facilities. CSUS explained that it commenced construction based on its assumption that the Commission would grant its application for minor modification because it was seeking authority to construct at a previously authorized site. CSUS also explained that it needed to substantially complete construction before the approach of severe winter weather. In Liability of Rasa Communications Corp., 11 FCC Rcd 13243 (MMB 1996) ("Rasa"), the Bureau assessed a forfeiture of \$7,500 against a permittee for unauthorized construction and operation, under circumstances where the variations were minor, promptly disclosed to the Commission, and quickly rectified by the permittee. In both Rasa and the instant case, the permittees commenced construction while their applications to reinstate their expired construction permits and to modify their construction permits were pending, although the variations were more substantial in this case. In Rasa, however, the permittee engaged in unauthorized construction and operation of the station while here the violation was limited to unauthorized construction. Taking all these factors into account, and also looking to Spectrum Broadcasting Corporation, 12 FCC Rcd 7724 (MMB 1997) (\$10,000 forfeiture assessed for unauthorized construction and operation) for guidance, we find that a \$5,000 forfeiture is appropriate in this case.

In regard to this forfeiture, CSUS is afforded a period of thirty (30) days from the date of this Notice "to show, in writing, why a forfeiture penalty should not be imposed or pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. § 1.80(f)(3). Other relevant provisions of Section 1.80 are summarized in the attachment to this Notice.

FEDERAL COMMUNICATIONS COMMISSION


Roy J. Stewart
Chief, Mass Media Bureau

Enclosure

³ CSUS reported such construction to the Commission in KKTO's application for extension of broadcast construction permit (File No. BPED-970129JA).